

Title 22: HEALTH AND WELFARE
Chapter 1669: CHILDREN'S HOMES

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Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 1669: CHILDREN'S HOMES

§8101. DEFINITIONS

As used in this subtitle, unless the context otherwise indicates, the following terms have the following meanings. [1981, c. 260, §4 (RPR).]

1. Children's home. "Children's home" means any residence maintained exclusively or in part for the board and care of one or more children under the age of 18. "Children's home" does not include:

A. A facility established primarily to provide medical care; [1981, c. 260, §4 (NEW).]

B. A youth camp licensed under section 2495; or [2009, c. 211, Pt. B, §19 (AMD).]

C. A school established solely for educational purposes except as provided in subsection 4. [1981, c. 260, §4 (NEW).]

[2009, c. 557, §5 (AMD) .]

2. Emergency children's shelter. "Emergency children's shelter" means a facility that operates to receive children 24 hours a day and that limits placement to 30 consecutive days or less. For purposes of this section, the definition of "children" includes a person under 21 years of age. "Emergency children's shelter" does not mean a family foster home or specialized children's home. If emergency shelter is a service provided by a children's residential care facility, the service is restricted to a designated physical area of the facility.

[2013, c. 179, §7 (AMD) .]

3. Family foster home. "Family foster home" means a children's home, other than an Indian foster family home, that is a private dwelling where substitute parental care is provided within a family on a regular, 24-hour a day, residential basis. The total number of children in care may not exceed 6, including the family's legal children under 16 years of age, with no more than 2 of these children under the age of 2. "Family foster home" includes the home of a resource family whether the family provides foster care, kinship care, adoption or permanency guardianship services, as long as the home meets the requirements and standards for adoption of children in foster care. Family foster homes licensed by the Department of Health and Human Services or relatives' homes approved by the Department of Health and Human Services as meeting licensing standards are eligible for insurance pursuant to Title 5, section 1728-A. In any action for damages against a family foster home provider insured pursuant to Title 5, section 1728-A, for damages covered under that policy, the claim for and award of those damages, including costs and interest, may not exceed \$300,000 for any and all claims arising out of a single occurrence. When the amount awarded to or settled for multiple claimants exceeds the limit imposed by this section, any party may apply to the Superior Court for the county in which the governmental entity is located to allocate to each claimant that claimant's equitable share of the total, limited as required by this section. Any award by the court in excess of the maximum liability limit must be automatically abated by operation of this section to the maximum limit of liability. Nothing in this subsection may be deemed to make the operation of a family foster home a state activity nor may it expand in any way the liability of the State or foster parent.

[2011, c. 187, §1 (AMD) .]

3-A. Indian foster family home. "Indian foster family home" means a foster home licensed, approved or specified by the Indian child's tribe where substitute parental care is provided for an Indian child as defined in the Indian Child Welfare Act, 25 United States Code, Section 1901, et seq.

[1999, c. 392, §5 (NEW) .]

4. Children's residential care facility. "Children's residential care facility" means a children's facility that provides board and care for one or more children on a regular, 24-hour a day, residential basis. For purposes of this section, the definition of "children" includes a person under 21 years of age. A children's residential care facility does not mean a family foster home, a specialized children's home or an emergency children's shelter. The term includes, but is not limited to:

- A. [2007, c. 324, §13 (RP).]
- B. An approved treatment facility under Title 5, section 20003, subsection 3; [2007, c. 324, §13 (AMD) .]
- C. A drug treatment center under section 8001; [2013, c. 179, §7 (AMD) .]
- D. [2007, c. 324, §13 (RP) .]
- E. A residential facility under Title 34-B, section 1431; and [2013, c. 179, §7 (AMD) .]
- F. A children's residential treatment facility with secure capacity. [2013, c. 179, §7 (NEW) .]

[2013, c. 179, §7 (AMD) .]

4-A. Shelter for homeless children. "Shelter for homeless children" means a facility designed to provide for the overnight lodging and supervision of children 10 years of age or older for no more than 30 consecutive overnights. For purposes of this section, the definition of "children" includes a person under 21 years of age.

[2013, c. 179, §7 (AMD) .]

4-B. Children's residential treatment facility with secure capacity. "Children's residential treatment facility with secure capacity" means a children's residential care facility that provides a mental health intensive treatment program to a child whose diagnostic assessment indicates that the persistent pattern of the child's mental health presents a likely threat of harm to self or others and requires treatment in a setting that prevents the child from leaving the program. For purposes of this section, the definition of "children" includes a person under 21 years of age.

[2013, c. 179, §7 (AMD) .]

5. Specialized children's home. "Specialized children's home" means a children's home where care is provided to no more than 4 moderately to severely handicapped children by a caretaker who is specifically educated and trained to provide for the particular needs of each child placed. The total number of children in a specialized children's home may not exceed 4, including the caretaker's legal children under 16 years of age, with no more than 2 children under the age of 2.

[1981, c. 260, §4 (NEW) .]

SECTION HISTORY

1975, c. 719, §6 (NEW). 1981, c. 260, §4 (RPR). 1983, c. 629, §1 (AMD). 1987, c. 778, §2 (AMD). 1989, c. 270, §15 (AMD). 1995, c. 301, §1 (AMD). 1999, c. 392, §§4,5 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 324, §§12-15 (AMD). 2009, c. 211, Pt. B, §19 (AMD). 2009, c. 557, §5 (AMD). 2011, c. 186, Pt. A, §1 (AMD). 2011, c. 187, §1 (AMD). 2013, c. 179, §7 (AMD).

§8102. RULES

1. Rules. The department shall adopt rules for the various levels of children's residential care facilities, including, but not limited to, facilities that are private nonmedical institutions, in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules must be designed to protect the health, safety, well-being and development of children and must include, but are not limited to:

- A. The number and qualifications of staff; [1981, c. 260, §4 (RPR).]
- B. Rights and responsibilities of parents, children and staff; [1981, c. 260, §4 (RPR).]
- C. The nature, provision, documentation and management of programs of care or treatment; and [1981, c. 260, §4 (RPR).]
- D. The physical environment. [1981, c. 260, §4 (RPR).]

[2013, c. 179, §8 (AMD) .]

2. Different classes.

[1981, c. 260, §4 (RP) .]

3. Public hearing.

[1977, c. 694, §379 (RP) .]

SECTION HISTORY

1975, c. 719, §6 (NEW). 1977, c. 497, §6 (AMD). 1977, c. 694, §379 (AMD). 1981, c. 260, §4 (RPR). 2003, c. 673, §V3 (AMD). 2003, c. 673, §V29 (AFF). 2013, c. 179, §8 (AMD).

§8103. FIRE SAFETY; INSPECTIONS FOR CHILDREN'S HOMES

1. Procedures.

[2003, c. 599, §10 (RP) .]

1-A. Inspection required. Except as provided in subsection 2, the department may not issue a license to operate to a children's home until the department has received from the Commissioner of Public Safety a written statement signed by one of the officials designated under Title 25, section 2360, 2391 or 2392 to make fire safety inspections. This statement must indicate that the children's home has complied with applicable fire safety provisions referred to in Title 25, section 2452.

[2003, c. 411, §1 (NEW) .]

2. Temporary license. The department may issue a temporary license to operate a family foster home, as defined by section 8101, subsection 3, without complying with the requirement to receive a written, signed statement under subsection 1-A prior to issuing the license as long as a preliminary evaluation of the home reveals no obvious fire safety violations.

[2003, c. 411, §1 (AMD) .]

3. Fees. The department shall establish and pay reasonable fees to the Commissioner of Public Safety for each inspection required pursuant to subsection 1-A.

[2003, c. 411, §1 (NEW) .]

4. Requirements for facilities with 17 or more beds. A children's home that has a capacity of 17 or more beds must comply with the Life Safety Code of the National Fire Protection Association, Residential Board and Care Occupancies sections for large facilities as adopted by the Commissioner of Public Safety.

[2003, c. 411, §1 (NEW) .]

5. Requirements for children's home with more than 3 but fewer than 17 beds. A children's home that has a capacity of more than 3 but fewer than 17 beds must comply with the Life Safety Code of the National Fire Protection Association, Residential Board and Care Occupancies sections for small facilities as adopted by the Commissioner of Public Safety. In addition, automatic emergency lights must be provided in the number and location required by the Commissioner of Public Safety.

[2003, c. 411, §1 (NEW) .]

6. Requirements for children's home with 6 or fewer beds. Notwithstanding subsection 5, the department may consider a children's home that has 6 or fewer residents, all of whom can evacuate the home without the assistance of another person in 3 minutes or less, to be in compliance with the one-family and 2-family dwelling requirements of the Life Safety Code of the National Fire Protection Association as adopted by the Commissioner of Public Safety. Facilities having 3 or fewer residents must meet the requirements of the one-family and 2-family dwelling chapter of the Life Safety Code of the National Fire Protection Association as adopted by the Commissioner of Public Safety.

[2003, c. 411, §1 (NEW) .]

7. Local regulations. Nothing in this section prevents a locality from imposing requirements for children's homes more stringent than those required in this section.

[2003, c. 411, §1 (NEW) .]

SECTION HISTORY

1975, c. 719, §6 (NEW). 1985, c. 706, §9 (RPR). 1989, c. 502, §A85 (AMD). 1997, c. 728, §12 (AMD). 2001, c. 515, §1 (AMD). 2001, c. 596, §B19 (AMD). 2001, c. 596, §B25 (AFF). 2003, c. 411, §1 (AMD). 2003, c. 510, §A18 (AMD). 2003, c. 599, §10 (AMD).

§8104. INTERAGENCY LICENSING

1. Interagency licensing method. The Commissioner of Education and the Commissioner of Health and Human Services, or their designees, shall jointly establish a method for interagency licensing of residential child care facilities subject wholly or partly to licensing by both of the departments. The method must provide for the following:

- A. Development of common licensing rules; [1981, c. 260, §5 (NEW) .]
- B. Periodic review of licensing rules; [1981, c. 260, §5 (NEW) .]
- C. Delegation of departmental responsibilities; and [1981, c. 260, §5 (NEW) .]
- D. Determination of licensing fees. [1981, c. 260, §5 (NEW) .]

[2005, c. 397, Pt. A, §28 (AMD) .]

2. Licensing authority. For the purposes of this section, the Department of Health and Human Services shall have licensing authority for residential child care facilities. This authority shall not relieve any agency of responsibility for the proper and efficient management or evaluation of programs funded by that agency.

[1981, c. 260, §5 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

3. Common licensing rules. Common licensing rules developed under this section shall eliminate varying, duplicative and conflicting rules and procedures. Common licensing rules shall also assure, as far as practicable, that:

A. Licensing is accomplished expeditiously; [1981, c. 260, §5 (NEW).]

B. Applicants have to deal with as few agency representatives as possible; [1981, c. 260, §5 (NEW).]

C. Consideration is given to special circumstances made known by an applicant which make the timing of licensing investigation unreasonable; [1981, c. 260, §5 (NEW).]

D. Applicants are promptly informed of licensing decisions and of the cause for any delay or denial; [1981, c. 260, §5 (NEW).]

E. Applicants do not have to obtain information from another agency if the licensing agency can obtain the information more conveniently; and [1981, c. 260, §5 (NEW).]

F. Rules are applied uniformly. [1981, c. 260, §5 (NEW).]

[1981, c. 260, §5 (NEW) .]

4. Authority to change daily rate for unlicensed foster care providers. Notwithstanding any other provision of law, the department may change the daily rates for foster board and care paid to unlicensed homes and may provide the opportunity for those unlicensed homes, if they choose to apply, to pursue licensure that could result in a higher rate of payment.

[2005, c. 12, Pt. RR, §1 (NEW) .]

SECTION HISTORY

1981, c. 260, §5 (NEW). 1981, c. 493, §2 (AMD). 1989, c. 700, §A95 (AMD). 1991, c. 824, §A49 (AMD). RR 1995, c. 2, §46 (COR). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 12, §RR1 (AMD). 2005, c. 397, §A28 (AMD).

§8105. TRANSITIONAL PROVISION

1. Rules. Any rule in effect immediately prior to the effective date of this section shall remain in effect until it is amended.

[1981, c. 260, §5 (NEW) .]

2. Licenses. Any license in effect immediately prior to the effective date of this section shall remain in effect unless it is revoked, suspended or made conditional, or until it expires, or until a new license is issued.

[1981, c. 260, §5 (NEW) .]

SECTION HISTORY

1981, c. 260, §5 (NEW).

§8106. REPORT

(REPEALED)

SECTION HISTORY

1981, c. 260, §6 (NEW). 1993, c. 685, §B4 (RP).

§8107. EXCEPTIONS

The following exceptions to placement, as defined in section 8101, shall apply. [1983, c. 629, §2 (NEW) .]

1. Number; placement. The limitations on the number of children in children's homes shall not prohibit the placement of more than the allowed number, if the purpose of the placement is to keep siblings together.

[1983, c. 629, §2 (NEW) .]

2. Handicapped; placement. The definitions used shall not preclude the department from placing a moderately to severely handicapped child in any appropriate child care facility at the department's discretion, subject to the limitations on the number of children specified in section 8101, subsections 1 and 3.

[1985, c. 706, §10 (AMD) .]

3. Residents 18 years of age or older. A resident in a children's home may remain in that home after attaining the age of 18 years without the home being required to be licensed as a boarding care facility under chapter 1663 if the department determines that it is in the best interest of the resident.

[1989, c. 355, §3 (NEW) .]

4. Parents of children receiving services. Adult parents may reside with their children in a children's residential care facility in order to facilitate the care of the child when the department has determined it to be in the best interest of the child.

[2013, c. 179, §9 (AMD) .]

The department may adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 320, §2 (NEW) .]

SECTION HISTORY

1983, c. 629, §2 (NEW). 1985, c. 706, §10 (AMD). 1989, c. 355, §3 (AMD). 2007, c. 320, §§1, 2 (AMD). 2013, c. 179, §9 (AMD).

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